

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALEXANDER UCEDA,

Case No.: 2:22-cv-00687-APG-EJY

Petitioner

V.

STATE OF NEVADA, *et al.*,

Respondents.

Order Granting Motion to Voluntarily Dismiss Petition without Prejudice

[ECF No. 33]

In his *pro se* 28 U.S.C. § 2254 habeas corpus petition Alexander Uceda challenges his conviction of several charges including robbery with use of a deadly weapon and discharging a handgun at or into a structure. ECF No. 1. He argues his trial counsel was ineffective in many ways such as for failing to obtain written statements from victims and failing to move for a new trial. On September 2023, I granted the respondents' motion to dismiss the petition in part, finding one ground as noncognizable and concluding that another ground was partially exhausted. ECF No. 31. I directed Uceda to choose one of the following options:

1. Submit a sworn declaration voluntarily abandoning the unexhausted claim in his federal habeas petition, and proceed only on the exhausted claims;

2. Return to state court to exhaust his unexhausted claim, in which case his federal habeas petition will be denied without prejudice; or

3. File a motion asking this court to stay and abey his exhausted federal habeas claims while he returns to state court to exhaust his unexhausted claim.

I specifically advised Uceda to familiarize himself with the limitations periods for filing federal habeas petitions contained in 28 U.S.C. § 2244(d), because those limitations periods may have a direct and substantial effect on whatever choice he makes regarding his petition.

1 On October 31, 2023, Uceda filed a motion to voluntarily dismiss the petition without
2 prejudice so that he may return to state court to exhaust his unexhausted claim. ECF No. 33. He
3 included a sworn declaration in support of the motion. I grant his motion and dismiss the petition
4 without prejudice.

5 I THEREFORE ORDER that the petitioner's motion to voluntarily dismiss petition [ECF
6 **No. 33] is granted. The petition is dismissed without prejudice.**

7 I FURTHER ORDER that the Clerk of Court enter judgment accordingly and close this
8 case.
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10 Dated: November 2, 2023



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U.S. District Judge Andrew P. Gordon